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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,774	07/03/2003	Mark Schmidt	108-194USANCO	7142
7590	10/05/2005		EXAMINER	
Thomas J. Perkowski, Esq., P.C. Soundview Plaza 1266 East Main Street Stamford, CT 06902			TUREMAN, JARED	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/613,774	SCHMIDT ET AL.
	Examiner	Art Unit
	Jared J. Fureman	2876

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 93-109 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 93-109 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/2003 & 6/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Receipt is acknowledged of the preliminary amendment on 7/3/2003, the IDS on 11/3/2003, the drawings and declaration on 3/8/2004, and the IDS on 6/1/2004, all of which have been entered in the file. It is noted that the IDS received on 6/1/2004 is a duplicate copy of the IDS received on 7/3/2003. Therefore, the IDS received on 6/1/2004 has been lined through. Claims 93-109 are pending.

Drawings

1. The drawings were received on 3/8/2004. These drawings are acceptable to the examiner.

Specification

2. The abstract of the disclosure is objected to because the abstract is greater than 150 words. Correction is required. See MPEP § 608.01(b).

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

4. The disclosure is objected to because of the following informalities:

Page 29, line 23: "35A" should be replaced with --35A1--, in order to correspond with the drawings.

Page 31, line 10: "43J" should be replaced with --43H--, since the brief description of figures 43I and 43J is given in lines 17 and 20, respectively.

Page 33: there is no brief description of figure 47B.

Page 33, line 5: "47A1" should be replaced with --48A1-- and "47C4" should be replaced with --47C4--, in order to provide a brief description of figures 48A1 through 48C4.

Appropriate correction is required.

Double Patenting

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 93-109 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 28-44 of copending Application No. 10/755,869 (hereinafter the '869 application). This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 93-109 of the present application appear to be identical to claims 28-44, respectively, of the '869 application. For example, claim 28 of the '869 application recites:

28. An wireless automatically-activated bar code symbol reading system for use in a work environment, said system comprising:

(A) a wireless hand-supportable bar code symbol reader in two-way RF communication with a base station operably connected to a host system, by way of an RF-based wireless data communication link having a predetermined RF

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communication range over which two-way communication of data packets can occur in a reliable manner, said wireless hand-supportable bar code reader symbol including

(1) a hand-supportable housing;

(2) a bar code symbol reading mechanism, disposed in said hand-supportable housing, for automatically reading a bar code symbol on an object within a first predetermined time period, and each instant said bar code symbol is read within said first predetermined time period, automatically producing a symbol character data string representative of said read bar code symbol;

(3) a first RF-based transceiver circuit, disposed in said hand-supportable housing, for transmitting to said base station groups of data packets associated with one or more of said produced symbol character data strings;

(4) a data packet group buffer, disposed in said hand-supportable housing, for buffering one or more groups of data packets associated with symbol character data strings produced in response to the reading of bar code symbols by said bar code symbol reading mechanism;

(5) a data transmission circuit, disposed in said hand-supportable housing, for transmitting a selected one of said produced symbol character data strings to either said first RF transceiver circuit or said data packet group buffer;

(6) a manually-operated data transmission activation switch, integrated with said hand-supportable housing, for generating a data transmission control activation signal in response to the activation of said manually-activatable data transmission switch within said first first predetermined time period; and

(7) a device controller, disposed within said hand-supportable housing, for controlling the operation of said wireless hand-supportable bar code symbol reader and said first RF-based transceiver circuit; and

(B) said base station installable within a work environment and including

(1) a base station housing,

(2) a second RF-based transceiver circuit, disposed within said base station housing, for receiving groups of data packets corresponding to the symbol character data strings transmitted from said first RF-based transceiver circuit, and

(3) a base station controller mounted in said base station housing, for controlling the operation of said base station;

wherein said first and second RF-based transceiver circuits enable a RF-based wireless data communication link between said wireless hand-supportable bar code reader and said base station;

wherein said first and second RF-based transceiver circuits cooperate to enable the communication of data packets between said wireless hand-supportable bar code symbol reader and said base station, over said RF-based wireless data communication link;

wherein said second RF-based transceiver includes means for automatically generating and transmitting a reference signal to said first RF-based transceiver circuit over said RF-based wireless data communication link;

wherein said first RF-based transceiver circuit includes means for automatically receiving said reference signal and detecting the strength of said reference signal;

wherein said device controller is programmed to automatically detect when said wireless hand-supportable bar code symbol reader is located inside of said predetermined RF communication range based on measuring the strength of said detected reference signal, and thereupon to automatically transmit to said first RF-based transceiver, the symbol character data string produced at substantially the same time when said data transmission control activation signal is generated while said wireless hand-supportable bar code symbol reader is located inside of said predetermined RF communication range; and

wherein said device controller is programmed to automatically detect when said wireless hand-supportable bar code symbol reader is located outside of said predetermined RF communication range based on measuring the strength of said detected reference signal, and thereupon to automatically collect and store in said data packet group buffer, the symbol character data string produced at substantially the same time when said data transmission control activation signal is generated while said wireless hand-supportable bar code symbol reader is located outside of said predetermined RF communication range.

Likewise, claims 29-44 of the '869 application are identical to claims 94-109, respectively, of the present application, and for the sake of brevity will not be repeated herein. Claims 28-44 of the '869 application can be seen in US 2005/0082371 A1.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schmidt et al (US 2005/0082371 A1) is a pre-grant publication of U.S. Patent application serial number 10/755,869. Schmidt et al (US 6,905,071 B2) teaches a bar code reading system including a manually-operated data transmission activation switch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared J. Fureman whose telephone number is (571)

272-2391. The examiner can normally be reached on 7:00 am - 4:30 PM M-T, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jared J. Fureman
Jared J. Fureman
Primary Examiner
Art Unit 2876

September 30, 2005